SUPREME COURT OF THE UNITED STATES.

No. ~~85~~ 33.

SYLVAN PEYROUX AND AL., CLAIMANTS OF STEAMBOAT PLANTER, APPELLANTS,

VERSUS

WM. L. HOWARD & FRANCOIS VARRION, LIBELLANTS.

APPEAL FROM THE DISTRICT COURT U. STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Libel	1	2
Account annexed thereto	3	2
Writ	14	10
Bond	15	10
Claim and plea of Peyroux and al	16	11
Amended answer of do	17	11
Affidavit of Sylvan Peyroux	18	12
Testimony of Thomas Bowman	19	12
Andrew Shields	20	13
John Handley	21	13
Levi Doane	22	14
Francois Vallett	23	14
Joseph Bertram	25	15
William Wilson	27	16
Gregory Byrne	31	17
Plea to the jurisdiction dismissed	32	18
Articles of agreement between Howard and Varrion and B. Jerreau	33	18
Do. do Howard and Peyroux, Rivarde and Co	33	19
Testimony of William Wilson	35	19
Decree and opinion of the court	36	20
Appeal prayed and allowed	39	21
Appeal bond	40	21
Citation	42	22
Clerk's certificate	43	22
Judge's certificate	44	22

DISTRICT COURT OF THE UNITED STATES, *Eastern district of Louisiana.*

Be it remembered, that on the tenth day of December, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fifth year of the independence of the United States, into the district court of the United States within and for the eastern district of Louisiana came William L. Howard and Francois Varrion, by their proctors, Carleton and Lockette, and filed the following libel, to wit:

To the honorable the district court of the United States in and for the Louisiana district, eastern district:

The libel of William L. Howard and Francois Varrion, residing in the city of New Orleans, shipwrights, shows, that the steamboat Planter and her owners are justly indebted to your libellants in the sum of two thousand one hundred and ninety-three dollars thirty-five cents, being the balance of the price of work, labor, materials furnished, and repairs made on said boat, under a contract of the 13th September and 19th October last, and of extra work, materials, and repairs made, which sum said owners refuse to pay when demanded, a detailed account of which materials, work, &c., is hereunto annexed as part of this libel. Your libellants further show, that they have, by the admiralty law and by the laws of the State, a lien and privilege upon said boat, her tackle, apparel, and furniture, for the payment of said sum, and that said boat is about leaving the port of New Orleans, where said work, labor and repairs, and materials were done and furnished, without your libellants' account being paid, and they fear if said boat does so depart they may lose their demand, and their lien and privilege on said boat, her tackle, apparel, and furniture; wherefore they pray admiralty process against said boat, her tackle and apparel, that the usual monition may issue, and after due proceedings, that said boat be decreed to be sold and your libellants' demand be paid out of the proceeds of sale by privilege and preference to any person, and that all such relief may be had the nature of the case requires.

CARLETON & LOCKETTE,
Proctors for libellants.

Said Francois Varrion being duly sworn, deposeth to the truth of the material facts set forth in the foregoing libel.

FRANCOIS VARRION.

Sworn to before me, this 10th December, 1830.

F. W. LEA, *Clerk.*

Judge's order.

Let admiralty process issue as prayed for.

SAMUEL L. HARPER, *Judge U. S.*

Copy of the account annexed to the libel of the libellants:

Owners of the steamboat Planter,

To Howard & Varrion Dr.

For sundry repairs done on board the steamboat Planter, as per agreement - - -	$1,150 00
For hauling up and launching steamboat Planter, as per contract - - - - -	475 00

302

Sept. 30, To 10½ days' work on board, at $2 50		25 62½	
80 feet oak plank, at 6 cts.		4 80	
171 do. pine do. 4		6 84	
			37 26½
Oct. 2, To 9 days' work on board, at $2 50		22 50	
222 feet pine plank, at 4 cts.		8 88	
			31 38
4, To 191 feet do. 4		7 64	
2 days' work on board, at $2 50		5 00	
			12 64
5, To 1 breast hook		3 00	
55 feet of oak timber, at 62½ cts.		34 37½	
3 days' work on board, at $2 50		7 50	
			44 87½
8, To 12 feet oak timber, at 62½ cts.		7 50	
12 do. 62½		7 50	
4½ days' work, at $2 50		11 25	
			26 25
9, To 6 feet oak timber, at 62½ cts.		3 75	
1½ days' work on board, at $2 50		3 75	
			7 50
11, To 26 feet oak timber, at 62½ cts.		16 25	
2½ days' work on board, at $2 50		6 25	
5 lbs. spikes, at 18¾ cts.		93¾	
12 lbs. bolt iron, at 8 cts.		96	
			24 39¾
16, To 18 lbs. bolt iron, 8		1 44	
11 days' work on board, at $2 50		27 50	
50 feet pine plank, at 4 cts.		2 00	
45 do. oak do. 6		2 70	
54 do. do. 6		3 24	
			36 88
18, To 41 feet oak plank, 6		2 45	
9 lbs of spikes, 18¾		1 68¾	
2½ days' work on board, at $2 50		6 25	
¾ day for apprentice 1 50		1 12½	
4 lbs. of spikes, 18¾		75	
			12 27½
19, To 1 piece of timber 4 00		4 00	
3½ days' work on board, 2 50		8 12½	
			12 12½
20, To 1 day's work on board, 2 50		2 50	
70 lbs. of oakum, 10		7 00	
25, To 1 day's work on board, 2 50		2 50	
26, To 2 days' work on board, 2 50		5 00	
			17 00
27, To 45 lbs. of oakum, 10		4 50	
77 feet oak plank, 6		4 62	
10 days' work on board, 2 50		25 00	
½ day for apprentice, 1 50		75	
Attendance		3 00	
			37 87

Oct. 28, To 52 lbs. of oakum, at 10 cts.				$5 20	
14 lbs. of spikes,	18¾			2 62½	
18 feet oak timber,	50			9 00	
12 do. do.	62½			7 50	
4½ do. do.	50			2 25	
107 do. plank	6			6 42	
11 days' work on board, at	$2 50			27 50	
Apprentice,				75	
Attendance,				3 00	
1 day's labor		1 50		1 50	
					65 74½
29, To 8 feet oak timber,		50		4 00	
6 do. do.		75		4 50	
55 lbs. of oakum,		10		5 50	
14 feet oak timber,		75		10 50	
21 do. do.		50		10 50	
82 do. plank,		6		4 92	
10 days' work on board,		2 50		25 00	
1 day's labor,		1 50		1 50	
Apprentice,				93¾	
Attendance,				3 00	
					70 35¾
30, To 3 feet of oak timber		50		1 50	
11 do. do.		50		5 50	
88 do. plank,		6		5 28	
87 do. do.		6		5 22	
					17 50
To 2 lbs. of spikes,		18¾		37½	
2½ feet oak timber,		50		1 25	
73 do. plank,		6		4 38	
11 days' work on board,		2 50		27 50	
1 day's labor,		1 50		1 50	
Apprentice,				93¾	
Attendance,				3 00	
					38 94½
Nov. 1, To 11 lbs. of spikes,		18¾		2 06¼	
7 feet live oak timber,		50		3 50	
69 do. oak plank,		6		4 14	
8 do. live oak timber,		50		4 00	
9 days' work on board,		2 50		22 50	
¾ day for apprentice,				93¾	
1 day's labor				1 50	
Attendance,				3 00	
					41 64
2, To 94 feet oak plank,		6		5 64	
5 do. live oak timber,		50		2 50	
26 do. oak timber,		1 00		26 00	
9 do. live oak,		50		4 50	
72 do. oak plank,		6		4 32	
66 do. do.		6		3 96	
12 days' work on board,		2 50		30 00	
1 day's labor,				1 50	

303.

Nov. 2, To apprentice,			93¾	
Attendance,			3 00	
				82 35¾
3, To 13 feet live oak timber, at	75		9 75	
13 do. do.	75		9 75	
5 do. do.	50		2 50	
72 do. oak plank,	6		4 32	
72 do. do.	6		4 32	
13 do. timber,	75		9 75	
13 days' work on board,	2 50		32 50	
1 day's labor,			1 50	
1 day for apprentice			1 00	
Attendance,			3 00	
				78 39
4, To 88 feet oak plank,	6		5 28	
6 do. live oak timber,	50		3 00	
6 do. do.	50		3 00	
96 do. oak plank,	6		5 76	
97 do. do.	6		5 82	
14 do. timber,	75		10 50	
7 do. do.	50		3 50	
6 do. do.	50		3 00	
13 days' work on board,	2 50		32 50	
1 day's labor,	1 50		1 50	
Apprentice,			1 00	
Attendance,			3 00	
				77 86
5, To 66 feet oak plank,	6		3 96	
100 do. do.	6		6 00	
6 mops,	25		1 50	
30 lbs. of spikes,	18¾		5 62½	
70 feet oak plank,	6		4 20	
4 do. live oak timber,	50		2 00	
8 do. do.	50		4 00	
12 days' work on board,	2 50		30 00	
1 day's labor,			1 50	
Apprentice,			1 00	
Attendance,			3 00	
				62 78½
6, To 84 feet oak plank,	6		5 04	
96 do. do.	6		5 76	
14 do. do. timber,	62½		8 75	
7 do. live oak do.	50		3 50	
24 do. oak plank,	6		1 44	
13 days' work on board,	2 50		32 50	
1 day's labor,			1 50	
Apprentice,			1 00	
Attendance,			3 00	
				62 49
7, To 66 feet oak plank,	6		3 96	
85 do. do.	6		5 10	
66 do. do.	6		3 96	
				13 02

Nov. 7, To 6 days' work on board, at	$3 00	-	18 00		
1 day's labor, - - -		-	1 50		
Apprentice, - - -		-	1 00		
Attendance - - -		-	3 00		
					23 50
8, To 99 feet oak plank,	6	-	5 94		
59 do. do.	6	-	3 54		
3 lbs. of spikes,	18¾	-	56¼		
99 feet oak plank,	6	-	5 94		
111 do. do.	6	-	6 66		
120 do. do.	6	-	7 20		
85 do. do.	6	-	5 10		
75 do. do.	6	-	4 50		
16 days' work on board,	2 50	-	40 00		
Apprentice, - - -		-	1 00		
Attendance, - - -		-	3 00		
					83 44¼
9, To 31 lbs. of spikes,	18¾	-	5 81		
112 feet of oak plank,	6	-	6 72		
102 do. do.	6	-	6 12		
120 do. do.	6	-	7 20		
81 do. do.	6	-	4 86		
16 days' work on board,	2 50	-	40 00		
1 day's labor, - -		-	1 50		
Apprentice, - - -		-	1 25		
Attendance, - - -		-	3 00		
					76 46
10, To 66 feet of oak plank,	6	-	3 96		
80 do. do.	6	-	4 86		
140 lbs. of spikes,	18¾	-	26 25		
99 feet oak plank,	6	-	5 94		
17 do. timber,	50	-	8 50		
80 do. plank,	6	-	4 80		
44 do. do.	6	-	2 64		
14½ days' work on board,	2 50	-	35 26½		
1 day's labor, - -		-	1 50		
Apprentice, - - -		-	1 25		
Attendance, - - -		-	3 00		
					98 32½
11, To 130 feet oak plank,	6	-	7 80		
94 do. do.	6	-	5 64		
72 do. do.	6	-	4 32		
84 do. do.	6	-	5 04		
8 do. timber,	50	-	4 00		
14 days' work on board,	2 50	-	35 00		
Apprentice, - - -		-	1 25		
Attendance, - - -		-	3 00		
					66 05
12, To 88 feet oak plank,	6	-	5 28		
99 do. do.	6	-	5 34		
128 do. do.	6	-	7 68		
90 do. do.	6	-	5 40		

304

Nov. 12, To 93 feet oak plank, at	6	-	5 58	
93 do. do.	6	-	5 58	
87 do. do.	6	-	5 22	
91 do. do.	6	-	5 46	
14½ days' work on board,	2 50	-	36 25	
Apprentice, - -	-	-	1 25	
Attendance, - -	-	-	3 00	
				86 04
13, To 93 feet oak plank,	6	-	5 58	
1 oak gunwale, -	-	-	4 00	
96 feet oak plank,	6	-	5 76	
40 do. do.	6	-	2 40	
84 do. do.	6	-	5 04	
13 days' work,	2 50	-	32 50	
1 day apprentice, -	-	-	1 25	
Attendance - -	-	-	3 00	
				59 58
14, To 6 lbs. of spikes,	18¾	-	1 12½	
94 feet oak plank,	6	-	5 64	
88 do. do.	6	-	5 28	
7 days' work, (Sunday,)	3 00	-	21 00	
Apprentice, - -	-	-	1 25	
Attendance, - -	-	-	3 00	
				37 29½
15, To 128 lbs. oakum,	10	-	12 80	
120 feet of oak plank,	6	-	7 20	
				20 00
To 17 days' work on board,	2 50	-	42 50	
Apprentice, - -	-	-	1 25	
Attendance, - -	-	-	3 00	
				46 75
16, To 33 lbs. of oakum,	10	-	3 30	
99 feet oak plank,	6	-	5 94	
10 do. timber,	50	-	5 00	
91 do. plank,	6	-	5 46	
84 do. do.	6	-	5 04	
80 lbs. of spikes,	18¾	-	15 00	
84 feet of oak plank,	6	-	5 04	
16 days' work on board,	2 50	-	40 00	
Apprentice, - -	-	-	1 25	
Attendance, - -	-	-	3 00	
				89 03
17, To 50 lbs. of oakum,	10	-	5 00	
92 feet oak plank,	6	-	5 52	
6 mops,	25	-	1 50	
50 lbs. of oakum,	10	-	5 00	
19 days' work on board,	2 50	-	47 50	
Apprentice, - -	-	-	1 25	
Attendance, - -	-	-	3 00	
				68 77
18, To 16 days' work on board,	2 50	-	40 00	
Apprentice, - -	-	-	1 25	

Nov. 18, To attendance, - - - -			3 00	
				44 25
19, To 136 feet oak plank, at	6 cts.	-	8 16	
47 do. pine do.	4	-	1 88	
46 do. do.	4	-	1 84	
44 do. do.	4	-	1 76	
6 days' work on board,	2 50	-	15 00	
Attendance, - -	-	-	3 00	
Apprentice, - -		-	1 25	
				32 89
20, To 1 live oak breast hook,		-	8 00	
32 feet oak plank,	6	-	1 92	
13 do. timber,	75	-	9 75	
13 lbs. of spikes,	$18\frac{3}{4}$	-	$2\ 43\frac{3}{4}$	
				$22\ 10\frac{3}{4}$
To 6 days' work on board,	2 50	-	15 00	
Attendance, - -	-	-	3 00	
				18 00
22, To 122 feet oak plank,	6	-	7 32	
40 do. pine do.	4	-	1 60	
42 do. do.	4	-	1 68	
4 lbs. of spikes,	$18\frac{3}{4}$	-	75	
2 days' work on board,	2 50	-	5 00	
Attendance, -	-	-	3 00	
				19 35
23, To 154 feet oak plank,	6	-	9 24	
37 do. pine do.	4	-	1 48	
5 lbs. of spikes,	$18\frac{3}{4}$	-	$93\frac{3}{4}$	
Attendance, - -	-	-	3 00	
$2\frac{1}{2}$ days' work on board,	2 50	-	6 25	
				$20\ 90\frac{3}{4}$
24, To 24 feet oak plank,	6	-	1 44	
30 lbs. of spikes,	$18\frac{3}{4}$	-	$5\ 62\frac{1}{2}$	
72 feet oak plank,	6	-	4 32	
2 days' work on board,	2 50	-	5 00	
Attendance, - -	-	-	3 00	
				$19\ 38\frac{1}{2}$
25, To 3 feet oak timber,	50	-	1 50	
15 do pine plank,	4	-	60	
2 days' work on board,	2 50	-	5 00	
				7 10
26, To 42 feet pine plank,	4	-	1 68	
1 day's work on board,	2 50	-	2 50	
				4 18
27, To 1 day's work on board,	2 50	-	2 50	
5 lbs. of spikes,	$18\frac{3}{4}$	-	$93\frac{3}{4}$	
				$3\ 43\frac{3}{4}$
28, To 44 feet pine plank,	4	-	1 76	
72 do. oak do.	6	-	4 32	
26 do. pine do.	4	-	1 04	
48 do. do. do.	4	-	1 92	
12 lbs. of spikes,	$18\frac{3}{4}$	-	2 25	

305

Nov. 28,	To 1 day's work on board, at	$2 50	-	2 50	
					13 79
29,	To 22 feet of timber for rudder,	1 00	-	22 00	
	51 do. pine plank,	4	-	2 04	
	12 do. do.	4	-	48	
	26 do. oak do.	6	-	1 56	
					26 08
	To 4 days' work on board,	2 50	-	10 00	
	Attendance, - -	-	-	3 00	
					13 00
30,	To 46 feet of pine plank,	4	-	1 84	
	38 do. do.	4	-	1 52	
	49 do. do.	4	-	1 96	
	63 do. do.	4	-	2 52	
	48 do. do.	4	-	1 92	
	16 do. oak,	6	-	96	
	48 do. pine,	4	-	1 92	
	6 days' work on board,	2 50	-	15 00	
	Attendance, - -	-	-	3 00	
					30 64
Dec. 1,	To 48 feet pine plank,	4	-	1 92	
	1 live oak knee -	-	-	12 00	
	50 feet pine plank,	4	-	2 00	
	20 do. do.	4	-	80	
	8 lbs. of spikes,	18¾	-	1 50	
	1 rudder tacking, -	-	-	2 00	
	6½ days' work on board,	2 50	-	16 25	
	Attendance, - -	-	-	3 00	
					39 47
2,	To 52 feet pine plank,	4	-	2 08	
	20 do. do.	4	-	80	
	2 do. oak timber,	50	-	1 00	
	42 do. pine plank,	4	-	1 68	
	9 lbs. of spikes,	18¾	-	1 68¾	
	6 days' work on board,	2 50	-	15 00	
	Attendance, - -	-	-	3 00	
					25 24¾
3,	To 10 feet oak plank,	6	-	60	
	48 do. pine do.	4	-	1 92	
	4 do. live oak timber,	50	-	2 00	
	25 do. pine plank,	4	-	1 00	
	5¾ days' work on board,	2 50	-	14 37½	
	Attendance, - -	-	-	3 00	
					22 89½
4,	To 27 feet pine plank,	4	-	1 08	
	2 days' work on board,	2 50	-	5 00	
	Attendance, - -	-	-	3 00	
					9 08
5,	To 45 feet pine plank,	4	-	1 80	
6,	To making a rudder -	-	-	18 00	
	1 day's work on board,	2 50	-	2 50	
	Omission in price of boat hook,		-	5 00	

Dec. 6, To 1 day's work on board, at $2 50	-	2 50	
			29 80
Errors and omissions excepted. - -			$3,693 35
Cr. By cash on account, - -			1,500 00
Balance due H. and V.	-		$2,198 35

Whereupon the following warrant was issued from the clerk's office, to wit:

The President of the United States of America to the Marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamboat Planter, her tackle, apparel, and furniture, now libelled by William L. Howard and Francois Varion in the district court of the United States for the eastern district of Louisiana, and that you cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court for the district aforesaid, to be holden at the city of New Orleans, on or before the 25th day of December, 1830, to shew cause, if any they have or can, why the said steamboat, her tackle, apparel, and furniture, should not be condemned and sold agreeably to the prayer of the libellants, and how you shall have executed this warrant that you make return according to law. Witness the honorable Samuel H. Harper, Judge of the said court, this 10th day of December, A. D. 1830, and 55th year of the independence of the United States.

F. W. LEA, *Clerk.*

Upon which warrant the marshal made the following return, to wit:

Received 10th December, 1830; served, seized, and took possession and inventory same day; published monition on the 11th, and released the boat on bond for double the claim of libellants; returned this writ, with the bond attached, into court on the 11th December, 1830.

O. F. BURLINGAME, *D. M.*

Bond.

Know all men by these presents, that we, Peyroux, Rivarde & Co. and F. Sel, are held and firmly bound unto John Nicholson, marshal of the United States for the eastern district of Louisiana, in the just and full sum of four thousand three hundred and eighty six dollars and seventy cents, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 11th day of December, 1830. The condition of the above obligation is such, that whereas the steamboat Planter has been libelled by Howard & Varion in the United States' district court; and whereas the above bounden Peyroux, Rivarde & Co. have duly filed in the district court of the United States for the eastern district of Louisiana, their claim for said steamboat Planter; now if said Peyroux, Rivarde & Co. shall well and truly pay or cause to be paid to the said John Nicholson, marshal, or to his certain attorney, the sum which shall be adjudged by

the court to said Howard & Varion upon the trial of the same, together with costs of suit, then this obligation to be void, or else to remain in full force and virtue.

PEYROUX, RIVARDE & CO.
F. SEL.

Signed, sealed, and delivered in presence of
O. F. BURLINGAME.

And afterwards, to wit, on the day and year last aforesaid, came Peyroux, Rivarde & Co. into said court, and filed the following claim and plea:

To the honorable the United States' district court for the eastern district:

The petition of Sylvan Peyroux, Achilles Rivarde, and Louis Bernard Areueil, all citizens of the State of Louisiana, and residing in the city of New Orleans, wherein they transact business under the commercial firm of Peyroux, Rivarde & Co., humbly sheweth, that these petitioners are the sole and lawful owners of the steamboat Planter, libelled in this court at the suit of William M. Howard and Francois Varion. And these petitioners and claimants further show, that the said William M. Howard and Francois Varion being also citizens of this State, this court has no jurisdiction over the case, and on a pretended debt contracted between the parties in this state; wherefore these petitioners humbly pray that the claim by them now set forth may be admitted, and that said libel be set aside as being wrongfully obtained from a court having no jurisdiction. And these petitioners and claimants further pray for such damages and other relief as the nature of the case may require; and in the mean while they also pray for an order to appraise said steamboat, that they may be allowed to bond her as the law directs, and as in duty, &c.

MOREAU, LISLET & SOULE,
Of counsel for petitioners.

Sylvan Peyroux, one of the firm of Peyroux, Rivarde & Co., being duly sworn, declares that the facts set forth in the above petition are correct and true.

SYLV. PEYROUX.

Sworn to before me, December 11th, 1830.

F. W. LEA, *Clerk.*

And afterwards, to wit, on the 15th day of December, 1830, came the said Peyroux, Rivarde & Co., and filed the following amended answer and claim, to wit:

UNITED STATES' DISTRICT COURT, *eastern district of Louisiana.*

The supplemental and amended claim and answer of Sylvan Peyroux, Achilles Rivarde, and Louis Bernard Areueil, to the petition of William M. Howard and Francois Varion. These defendants, in answer to the said petition and libel, answer and say, that they deny all and singular the facts therein set forth; wherefore these defendants pray to be hence dismissed, with their reasonable costs and charges.

S. MOREAU, LISLET & SOULE,
Of counsel for defendants.

And afterwards, to wit, at a session of the court aforesaid, holden on the 4th day of January, A. D. 1831, the following order of court was entered on record, to wit:

TUESDAY, January 4th, 1831.

The court met pursuant to adjournment. Present, the honorable Samuel H. Harper.

2,964.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

Upon filing the affidavit of Sylvan Peyroux, one of the claimants, it is ordered by the court, that this cause be continued until Tuesday next, when the same is fixed for trial.

Affidavit.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

Sylvan Peyroux, one of the defendants in this case, maketh oath that several witnesses, and among others Capt. Jerreau, who resides within the reach of the process of this court, are wanting, and now navigate on the Mississippi between this city and bayou Sarah, and on Red river between this place and Alexandria; that said defendant believes that said witnesses are material and competent in this case, and that he expects to prove by them that the said Howard and Varion have not complied with the contract by them relied upon, and that they have not executed the work by them undertaken for the steamboat Planter; that all reasonable endeavors have been used to procure the attendance of said witnesses at the term, and that the defendants cannot safely go to trial without the benefit of their testimony; and furthermore that this affidavit is not made for the purpose of delay.

SYLVAN PEYROUX.

Sworn to in open court, this 4th January, 1831.

S. M. DAVIDSON, *Clerk.*

And afterwards, to wit, on the 11th day of January, A. D. 1831, the following order of court was entered on record, to wit:

TUESDAY, 11th January, 1831.

The court met pursuant to adjournment. Present, the honorable Samuel H. Harper.

2,964.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

By consent of parties, it is ordered that the testimony of the witnesses for the respective parties be taken before the clerk of this court, subject to all legal exceptions, to be read in evidence at the trial.

Testimony taken under the above order of court:

2,964.

HOWARD & VARION
vs.
STEAMBOAT PLANTER. } *U. S. District Court, E. D. Louisiana.*

The testimony of Thomas Bowman, a witness on the part of the defendants, taken under an order of court of this date, to wit, 11th January, 1830, subject to all legal exceptions, who after being duly sworn, says, that he is engineer on board the Planter; that he has been on board of said boat since the 13th September to this date, and during the whole period while the boat

307

was repairing; that the boat came over to this side (the city side) on the 10th November last, as he believes; considered Varion as the person who was to superintend the repairs; has frequently noticed that Varion was absent while the repairs were going on; it is not to his knowledge that the workmen complained of the absence of Varion; has heard Capt. Jerreau complain of the undertakers' delaying to make the repairs; at one time two or three men were taken away from working on the Planter to work on the Atlantic and Oregon.

No cross questions.

Andrew Shields, another witness for defendant, being duly sworn, says, that he is employed on board the Planter as second engineer and blacksmith; was on board the Planter the whole time she was repairing except three or four days; Howard and Varion were absent at different times while the boat was repairing, perhaps a day at a time, perhaps more, and did not pay particular attention to it; that he himself made some tools for Varion; that he fixed some tools for the workmen, who said they were idle until these tools were fixed; they were idle until the tools were so fixed, as they stated; the boat came over to the city side of the river on the 8th December last; that one workman came over with the boat and worked on her on this side of the river; some work was done on the boat since she came across the river by Varion's workmen; the boat was repaired on the river opposite the city; that after she was launched there were not so many workmen on board of her.

Cross-examined.

The tools he fixed were some punches, and lengthened some augers, and put new steel on some punches; a considerable work was done on board the Planter by various workmen; does not know the reason why fewer workmen were on her after she was launched than before; supposes she required as many workmen after as before she was launched; the boat was hauled out dry in Howard and Varion's ship yard; he saw workmen working under, on her, and round her; he knows there were planks put on her side; does not recollect hearing any one complain of the badness of the work done on the boat; that the boat leaked after she was launched on her upper and lower deck; Capt. Jerreau was looking about the boat while the repairs were going on at least two-thirds of the time.

John Handley, another witness for the defendant, being duly sworn, says, that he was carpenter on board the Planter from the time she began to be repaired up to the time she was finished; Varion was absent sometimes while the boat was repairing; does not know that the workmen complained of it; that the boat crossed the river on the 8th December last; that all the repairs were not done when the boat came over; one workman worked two days after she crossed; this workman was one who had been in the habit of working for plaintiffs; there is one beam which remains now unbolted; witness, who is the boat's carpenter, put putty in the seams along side the wheel house close to the pilot's room; the boat leaked on the upper and lower deck after she came across the river; knows that there one, two or three taken away from the Planter to work on the Atlantic, he thinks two.

Cross-examined.

Was employed by Capt. Jerreau on the boat while she was repairing as carpenter; Captain Jerreau was frequently on board while the repairs were

making, except when he, Capt. Jerreau, was sick; never heard any say the work was done badly except that part of the deck already spoken, and that she leaked; part of the bottom of the boat was repaired a little under the transom, and planks put under the forward, and some timbers; shall not call all the stern new, for the counter was not taken out; the stern post was not taken out; three new transoms were put in the stern and planked, but he does not know how far down; Gordon put in the beam, and Gordon was with Varion.

Levi Doane, another witness for defendants, being duly sworn, says, that after the boat was hauled out he was employed by plaintiffs to work on her; he left the Planter and went to work on the Atlantic; sent there by plaintiffs; he saw plaintiffs around the boat Planter while she was repairing generally; he worked a part of two days on the after part of the bottom of the boat, and all the plank he saw put in was good.

Cross-examined.

Saw Capt. Jerreau about the boat often while she was repairing; he never heard any one say she was not well repaired; the work on the boat was done in a workmanlike manner, and done as well as he should wish to see work done; the materials he saw put on the boat were good, but his work was separate, being employed in making the rudder; he saw the boat after she was finished, and considered the work well done, and looked very neat.

Examination in chief.

When he last saw the boat he cannot say whether she was entirely finished or not.

2,964.

HOWARD & VARION
vs.
STEAMBOAT PLANTER. } *District Court U. S., E. D. Louisiana.*

The testimony of Francois Vallet, a witness for the plaintiffs, taken under the order of the court, and by consent of parties, to be read in evidence at the trial of this cause, subject to all legal exceptions, who being duly sworn, says, that he was a workman employed by the plaintiffs from the beginning of the repairs in question; that he commenced working on the boat on Friday, the 7th October last, and continued to work until the boat was finished and crossed the river to the city; that a great deal of work was done on the boat; that she was hauled out high and dry; that work was done on her bottom, on deck, on her sides, stern and bow; that witness put three transoms in her stern, made the aprons for the boat; that he put on the outside planks, from the keel up to the beams, and the planks were three inches thick: he put on all the plank anew forward of the boat up to the beams, two live oak breast hooks, and helped generally to work on all parts of the boat; that Capt. Jerreau was there constantly, and saw and gave the directions what work was to be done, and how it was to be done; that towards the latter part of the work, while caulking the deck, plaintiffs wished to take up some planks, saying they were rotten and ought to be replaced by new ones; Capt. Jerreau refused, and when the caulkers had done caulking on one side and began the other, they found to be rotten, and they had then to be taken up, and others to be put in their place, and caulked over again; this was the cause in the delay in not delivering the boat at the time agreed on; that

308

this happened several times; that had it not been for this the plaintiffs would have delivered the boat at eight ~~three~~ days sooner than she was actually; that while the work was progressing, Capt. Jerreau appeared to be pleased with the work and the manner in which it was done, and said to witness that he, Capt. Jerreau, did not care if the boat was not delivered at the time specified; that seven or eight days, more or less, made no great difference; and that there were several days of very bad weather while the repairs were going on, and the weather was so bad that the plaintiffs were obliged to stop working on the boat; that Capt. Jerreau was satisfied with the work, and saw it going on every day, and never complained of the materials or the workmanship; that witness was present when the account was presented to Capt. Jerreau, who said he was not surprised at it because there was a great deal more work done than he had any idea of, and that he did not think at first that she required so much; that after the boat was hauled out and Capt. Jerreau examined her, he said he now thought she was so rotten and would require so much work to repair her; he said if he had known the boat was so rotten and required so much repairs he never would have purchased a share in her; that all the work done and all the materials were good, the work executed in a workmanlike manner and the materials sound; that deponent's trade is that of a ship carpenter; that he has worked at his trade for six years, and, from his knowledge of work and the manner in which it was done, he thinks the price charged by plaintiffs is moderate, and he thinks no other ship builder would have done it for less; that at the time the repairs in question were done, timber of the required quality and quantity was scarce; that the boat could have crossed the river several days before she did, because the engine and painting was not finished, and that the very day she did cross one of the chimneys were taken down, and the boat's blacksmith was working on shore; that plaintiffs had nothing to do with the engine nor painting; that Captain Jerreau said he was in no great hurry to cross.

I have no cross interrogatories to propound to the above witness.

SOULE, *attorney for def'ts.*

HOWARD & VARION *vs.* STEAMBOAT PLANTER. } *U. S. District Court, Louisiana District.*

The testimony of Joseph Bertram, taken by order of the court, and by consent of parties, to be read in evidence on the trial of this cause, who being duly sworn as a witness on the part of the plaintiffs, says, that he worked at the steamboat before she was hauled up, and after she was hauled out till she was launched; that he is a ship carpenter by trade, and has worked as such for about twelve years; that he saw all the work done on the steamboat in this case; that all the materials employed in repairing the boat were of the first quality, and that the work is done in a workmanlike manner; that Capt. Jerreau was present during the whole time the boat was repairing, with the exception of a very short time; that Capt. Jerreau was the person who directed what was to be done, and which part of the boat was to be repaired, and what part was to be let alone; that he never heard Capt. Jerreau say or complain of the work or materials, but said he was very well satisfied; that he heard Capt. Jerreau say to Francois Vallette that seven or eight days sooner or later in finishing the boat made no great difference; that he cannot say what the work was worth; that he began to work seven or eight

days before the boat was hauled out; and that about thirty-eight new timbers were put into the stern of the boat.

I have no cross interrogatories to propound to the above witness.

SOULE, *attorney for def'ts.*

HOWARD & VARION *vs.* STEAMBOAT PLANTER. } *U. S. District Court, E. D. Louisiana.*

The testimony of William Wilson, a witness on the part of the plaintiffs, taken under an order of the court, by consent of parties, and to be read in evidence at the trial of this cause, subject to all legal exceptions, who being duly sworn, says, that he is acquainted with the plaintiffs and with Capt. Jerreau; that he has been the clerk of plaintiffs from the 20th October last, inclusive, up to this date; that he was clerk during the time that the plaintiffs were repairing the said steamboat; that from his own personal knowledge he knows that every foot of timber that was employed in the repairing the said boat was by him measured before it was used, and he knows, from being present, that the said timber was worked up in said boat in repairing her; that he, as clerk, took an account of the work done to the boat, and used every day before breakfast, after breakfast, and after dinner, to go to the boat and examine, and look and see that all the hands were at work, and as timber was wanted he measured and delivered it; after this delivery, he saw it moulded, worked up, and put into the boat; that it was his duty as clerk; and he was employed for the purpose of measuring all timber, delivering it, and seeing that the men were at their work, and to take an account of the same; that Capt. Jerreau was about the boat most of his time, nearly all the time, and for three or four days kept an account of all timber used in the boat, and the work done on the boat, the number of workmen employed about her, and the three dollars a day charged by the plaintiffs for their personal attention to the repairs, as well as the price of the material so used, which agreed with deponent's; that deponent desired Capt. Jerreau to continue his account, but he declined, saying that he only kept the account for a few days to see what the repairs would come to; that Capt. Jerreau inspected the work as it progressed, and saw all the materials used, and never made, as far as deponent knows, any objection to the price, quality or quantity; that Capt. Jerreau acted as commander of the boat, and is now her commander, and was such at the time she was launched; that the boat was hauled up high and dry opposite the city of New Orleans, where she was repaired; that in the account kept by Capt. Jerreau the price of the timber was put down, and he knew the cost of it; that deponent has been brought up to a seafaring life, and has had the command and superintendence of vessels while navigating and repairing; has had ships hove out and repaired in Gibraltar, Boston, State of Maine, and Havana, and many other places, and professes to understand and know whether a vessel is well repaired or not, whether the work done on vessels be such as it ought to be or not; and from his knowledge and experience, he says that the steamboat Planter has been well repaired, and the work done in a workmanlike manner; that his opinion is, without hesitation, that the work done on the Planter, including the contract work, is worth the sum claimed by Howard and Varion; that after the boat was hauled out and opened, Captain Jerreau said the boat was a great deal worse than he suspected, and would cost a great deal more money to repair her than he calculated; that Capt. Jerreau directed what was to be done in

repairing, and every plank and timber which was taken out and replaced, was done according to his directions; and in several instances, after some of the seams on one side of the plank had been caulked, and on trying to caulk the other side the plank was found to be rotten on that side, these planks had to be taken out and others put in, and the caulking done over; this was caused by his refusing to let Howard & Varion take out what they thought rotten and replacing it, and this caused a great delay in finishing the work; that in one other instance, when the plaintiffs wished to put some timbers in the larboard bow, Capt. Jerreau said it must not be done, but when the workmen came to bend the plank round the bow, outside the boat, the timbers of the boat were so decayed that they would not hold the plank to, and finally new timbers were obliged to be put in; these and several other refusals on the part of Capt. Jerreau to do as plaintiffs suggested, and two or three rainy days, was the reason why the boat was not delivered at the time specified in the contract; that in consequence of the delay caused by Capt. Jerreau refusing to permit plaintiffs to take out and replace the timbers and planks, &c., as above stated, and on some other occasions of a similar nature, the boat was detained; and in a conversation which took place in deponent's presence between Capt. Jerreau and Howard & Varion, and upon Howard & Varion's expressing some uneasiness about the damages to be paid for not delivering the boat at the time agreed on in the contract, Capt. Jerreau told plaintiffs they might be easy about it; that he was part owner, and he should have something to say in the business, and that they, Howard & Varion, should not suffer by it, and that plaintiffs had more to do than they or he at first calculated on; that the boat might have come over three days sooner than she did, and that if she did not, it was not Howard & Varion's fault; deponent's opinion is that the engine was not done, for their blacksmith was working on shore until the day she came across; that that day her chimneys were taken down for some purpose: this part of the work was not included in plaintiffs' undertaking; that Capt. Jerreau did not appear to be in any great hurry, and painted his boat on the other side of the river, and said a day or two made no great difference; the beam spoken of by the defendants' witness, who was the boat's carpenter, was put in by the boat's carpenter, who gave his testimony in this case, under the orders of Capt. Jerreau.

I have no cross interrogatories to propound to witness.

SOULE, *attorney for def'ts.*

Plaintiffs admit they have received fifteen hundred dollars on account.

VARION & HOWARD.

It is admitted that two other witnesses, to wit, Mr. Daniel and Mr. Gabriel, will swear to the same facts as stated by Francois Vallett, William Wilson, and Joseph Bertram.

LOCKETTE, *for plaintiffs.*
SOULE, *for defendants.*

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

Gregory Byrne, a witness on the part of the plaintiffs, taken under the order of the court, before the clerk of said court, on this 19th day of January, 1831, at the office of said clerk, between the hours of 4 and 5 o'clock in the afternoon; the said Byrne being duly sworn, says, that he is a shipbuilder, and has been working and doing business at that trade for twelve years; that he has examined the account of the plaintiffs, and the charges

and prices therein contained, and he says that the same are reasonable; that after the boat was launched and partly loaded he examined her and the work, as far as he could see, and it is his opinion that the same is done in a workmanlike manner. GREGORY BYRNE.

Taken and sworn to before me, this 19th January, 1831.

F. W. LEA, *Clerk.*

And afterwards, to wit, at a session of said court holden on the 22d day of January, 1831, the following order was entered on record, to wit:

SATURDAY, January 22d, 1831.

The court met pursuant to adjournment. Present, the honorable Samuel H. Harper.

2,964.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

On motion of Messrs. Carleton and Lockette, ordered that this cause be set for trial for Thursday next.

And afterwards, to wit, at a special session of the court aforesaid, holden on the 27th day of January, 1831, the following entry was made on the record, to wit:

SPECIAL COURT, THURSDAY, January 27th, 1831.

Present, the honorable Samuel H. Harper.

2,964.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

This cause came on to be heard before the court. On motion of libellants, by their proctor, ordered that the plea to the jurisdiction be dismissed; when, after hearing the evidence and arguments of counsel, the court took time to consider.

On the trial of this cause the libellants introduced in evidence the two following contracts:

Translation.

We, the undersigned, Howard & Varion, of one part, and B. Jarreau of the other part, agree as follows, to wit: We, Howard & Varion, engage ourselves towards said Jarreau to make the following repairs to the steamboat Planter: to make the half beams anew, larboard and starboard side, from the wheel house to the bow railings, and stanchions or posts, and guard board, and nozings, fore and aft night heads; the aprons of the boat anew; to caulk fully, that is to say, to caulk the boat as low as possible, and the main and second deck, and graving pieces wherever required; new railing and stanchions or posts to be put also on the upper deck, the side planks of the which may not be sound to be replaced by new ones, and paid for separate from this contract; in consideration of these repairs being made in such a manner as that they shall be approved by experts, the said Jarreau engages to pay, in the name of the boat, the sum of $1,150, the price agreed upon between us. New Orleans, 11th September, 1830.

HOWARD & VARION,
B. JARREAU.

SOULE,
H. LOCKETTE.

310

Translation.

We, Francois Varion & Howard, engage ourselves to haul on shore the steamboat Planter, now lying in front of our ship yard, in consideration of the sum of $475, which Messrs. Peyroux, Rivarde & Co. are to pay us, as follows, $200 cash, and the balance in one month after the said boat shall be launched and set afloat; we oblige ourselves to caulk and repair said boat, under the inspection of Capt. Jarreau, so as she shall not leak: this work shall be paid for by Messrs. Peyroux, Rivarde & Co. when the account of the same is approved by Capt. Jarreau; we obligate ourselves, moreover, to deliver said boat afloat on or by the 20th November next, and to finish all the work we engaged to do as well by the present contract, as by that of the 13th September last, and in default of our delivering said boat by the 20th November ready to receive a cargo, we will support a diminution of $25 per day for each day we retard such delivery, to be deducted out of the money we are to receive from Messrs. Peyroux, Rivarde & Co. for said work. Made in double at New Orleans, this 19th October, 1830.

P. SOULE, PEYROUX, RIVARDE & Co.
H. LOCKETTE.

And afterwards, to wit, at a session of said court, held on the 4th day of February, 1831, the following order was entered on record:

SPECIAL COURT, FRIDAY, 4th February, 1831.

Present, honorable Samuel H. Harper.

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

The court desiring further explanation of the account filed by the libellants in this case, orders that William Wilson be summoned to appear for that purpose on Monday next, at 11 o'clock A. M., and that notice of this order be given to the proctors for the libellants and claimants.

And afterwards, to wit, at a special session of the court aforesaid, holden on the 7th day of February, 1831, the following additional testimony was taken and reduced to writing:

HOWARD & VARION *vs.* STEAMBOAT PLANTER.

Testimony taken in open court, this 7th February, 1831, in this case, in presence of both parties. William Wilson being duly sworn, says, that all the charges and items for work done in the account of the libellants is over and above the work done under the first contract for $1,150; that the libellants had hands at work at the repairs under the contract and the extra work at the same time; there is not a day's work nor a foot of plank charged in the account of libellants which was to be done under the first contract.

W. WILSON.

Sworn to in open court, this 7th February, 1831. F. W. LEA, *Clerk.*

And afterwards, to wit, at a session of the court aforesaid, holden on the 7th day of February, 1831, the following decree was entered of record, to wit:

SPECIAL COURT, MONDAY, 7th February, 1831.

Present, honorable Samuel H. Harper.

2,964.

HOWARD & VARION *vs.* STEAMBOAT PLANTER. PEYROUX, RIVARDE & Co. claimants.

The court having maturely considered this case, now order, adjudge and decree, that a decree be entered up in favor of the libellants for the sum of